(19,603.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 503.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

F. E. DEER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

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1 THE STATE OF ALABAMA, }
Montgomery County. }

Organization of Court.

Be it remembered that at a term of the city court of Montgomery, begun and holden for said county at the court house in the city of Montgomery, State and county aforesaid on the 1st Monday in February in the year of our Lord one thousand nine hundred and two, it being the third day of said month—present the Honorable A. D. Sayre, judge presiding—the following proceedings were had and the following judgments were rendered to-wit:

THE STATE OF ALABAMA, }
Montgomery County. }

Justice's Court.

To any constable of said county:

Summon Louisville & Nashville R. R. Company, a corporation, to appear before me on the 4th day of February at 12 m. at my office to answer the complaint of F. E. Deer and then and there make return of this summons.

Issued 27th day of January A. D. 1902.

B. H. SCREWS, J. P.

Complaint.

Cause of Action.

The plaintiff claims of the defendant, a corporation, ($24.36) twenty-four & 36/100 dollars, due from it by account stated, on to-wit: the 18 day of November 1901.

The plaintiff further claims of the defendant ($24.36) twenty-four & 36/100 dollars for work and labor done for the defendant by the plaintiff on to-wit: during the month of Oct., 1901, at defendant's request, which sums of money with interest thereon are now past due and unpaid.

W. F. HERBERT,
Att'y for Pl'ff.

Executed by serving a copy — J. M. Falkner, att'y for L. & N. R. R. Co., January 27th, 1902.

W. B. GILMER, Constable.

2 THE STATE OF ALABAMA, }
Montgomery County. }

Appeal Bond.

Know all men by these presents: that we, the Louisville & Nashville Railroad Company and J. M. Falkner and Geo. W. Jones are held and firmly bound unto F. E. Deer his heirs, executors and administrators and assigns, in the full and just sum of sixty-five dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

Signed with our seals and dated this 7th day of April, 1902.

The condition of this obligation is such, that whereas, on the 7th day of April 1902, B. H. Screws, a justice of the peace, in and for said county and State, at the suit of F. E. Deer against The Louisville & Nashville Railroad Company, did render judgment in favor of said F. E. Deer against said Louisville & Nashville Railroad Company for the sum of twenty-four and 36/100 dollars, besides five & 35/100 dollars costs of suit, and whereas the said Louisville & Nashville Railroad Company did on the 7th day of April 1902, pray for an appeal from said judgment to the next term of the city court of Montgomery of said county as well as a supersedeas of said judgment, both of which have been allowed on the entering into this obligation.

Now, therefore, if the said Louisville and Nashville Railroad Company will well and truly prosecute such appeal to effect and pay and satisfy such judgment as said city court of Montgomery shall render in the premises, then this obligation shall be null and void, otherwise to remain in full force and effect.

Witness our hands and seals, this 7th day of April 1902.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
By J. M. FALKNER, Its Attorney. [L. S.]
J. M. FALKNER. [L. S.]
GEO. W. JONES. [L. S.]

Approved, this 8th day of April, 1902.
B. H. SCREWS, J. P.

3 MONTGOMERY, ALA., April 7, 1902.

F. E. DEER
v.
LOUISVILLE & NASHVILLE R. R. COMPANY. } # 24.36. Before B. H. Screws, J. P.

Transcript of Docket.

Jan'y 27th / 02—Summons & complaint issued and executed.
April 7 / 02—On trial of this cause judgment is awarded plaintiff for $24.36 and $5.35 costs.
(Appeal taken to city court.)

B. H. SCREWS, J. P.

J. P. cost $5.35.

In the City Court of Montgomery, Ala.

F. E. DEER
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY. } Pleas of Defendant.

Comes the defendant in the above entitled cause and for answer to the complaint heretofore served on it in said cause says:

First. That it is not indebted to the plaintiff for the amount as alleged in the said complaint, nor in any other amount.

Second. For further answer to said complaint defendant says that it did, at one time, owe said plaintiff the sum of $24.36 for services performed by him during the month of October, 1901, but that prior to the commencement of this suit, towit, on November 18th, 1901, a suit was commenced in the justice of the peace court of L. L. Charles, in Washington county, Florida, in the case of C. C. Brock, plaintiff *vs.* F. E. Deer, defendant and The Louisville & Nashville Railroad Company garnishee in which said suit judgment was duly rendered against the said defandant, F. E. Deer, and against The Louisville and Nashville Railroad Company as garnishee on the 7th day of January, 1902, in the sum of $19.98 and the costs, (amounting to $4.38) said judgment and costs aggregating the said amount of $24.36. And defendant avers that the garnishment summons in said garnishment suit of C. C. Brock, plaintiff *vs.* F. E. Deer, defendant and Louisville & Nashville Railroad Company garnishee, was regularly served upon a business agent of said garnishee,
4 resident of the county in which said action was brought, as provided by the statutes of the State of Florida, and that the proceedings in said cause were conducted in strict accordance with the statute laws of Florida in such cases made and provided; that this defendant was compelled to pay, and did

pay, in satisfaction of the said judgment against it as garnishee, as aforesaid, into the said court of L. L. Charles, justice of the peace as aforesaid, the said sum of $24.36, prior to the commencement of this suit. And defendant avers that under the laws of the State of Florida the docket of a justice of the peace, or a certified copy thereof, is evidence of the matters therein stated, throughout said State; and defendant files herewith as "Exhibit A," and makes a part hereof, a duly authenticated certified copy of the docket of said justice of the peace, L. L. Charles, showing the proceedings had in said case of C. C. Brock, plaintiff *vs.* F. E. Deer, defendant and Louisville & Nashville Railroad Company garnishee. And defendant avers that the statutes of the State of Florida, under which said proceedings in said case of C. C. Brock, plaintiff *vs.* F. E. Deer, defendant and Louisville & Nashville Railroad Company garnishee were had, are as follows, to-wit:

"Process, How Served."

"1019. Upon a private corporation.—Process against a corporation domestic or foreign, may be served:

1st. Upon the president or vice-president or other head of the corporation, in the absence of such head:

2nd. Upon the cashier or treasurer, or secretary, or general manager; or, in the absence of all of the above:

3rd. Upon any director of such company; or, in the absence of all the above:

4th. Upon any business agent resident in the county in which the action is brought.

5th. If a foreign corporation shall have none of the foregoing officers or agents in this State, service may be made upon any agent transacting business for it in this State."

"1658. Service and contents of.—In all cases commenced by attachment, where property shall be attached and not retaken by the defendant, a notice of the institution of the suit by attachment shall be personally served upon the defendant, or shall be published once each week for three months in some newspaper in the county in which the suit is instituted.

"Such notice shall require the defendant and all other
5 persons interested to appear to the action. If the notice be a personal one, the time fixed for appearance shall be as in summons *ad respondendum*; and if it be published, the time fixed shall be the rule day succeeding the last publication.

"Service of the personal notice shall be made at the time fixed for service of the summons *ad respondendum*, and if made within the State, shall be made by the executive officer of the court, but if it be made out of the State, it may be made by any person, and proof thereof shall be furnished by the affidavit of such person before any judicial officer having a seal, in the State where such service is made. If the writ be issued by a justice of the peace or county judge, the publication shall be only for one month."

"1666. Right defined.—Every person who shall have brought a suit in any court of this State against any person, natural or corporate, shall have a right to a writ of garnishment under the circumstances and in the manner hereinafter provided, to subject any indebtedness due to the defendant by a third person, and any goods, moneys, chattels or effects of the defendant in the hands, possession or control of a third person."

"The officers, agents and employés of railroad companies shall be, as regards such companies, third persons, and as such shall be subject to garnishment after judgment against such companies."

"1686. Proceedings when defendant not to be found.—If the officer to whom any summons *ad respondendum* has been directed in a suit in which a writ of garnishment has been issued shall return that the defendant does not reside in the State, or if the officer to whom has been directed a writ of attachment in a suit commenced by attachment in which a writ of garnishment has also been issued shall not be able to find property of the defendant upon which to levy the writ of attachment, the plaintiff may give notice of the institution of such suit in the manner provided for giving notices of suits commenced by attachment."

"And the pleadings and proceedings, and entry of defaults and judgments shall be as in such cases of attachments.

"If the plaintiff in such case shall not give such notice within sixty days after the issuing of the writ of garnishment, the suit shall be dismissed upon motion of the defendant, or of the garnishee."

6 "An Act to Amend Section 1658, Revised Statutes, Relating to Notice of Suit and Service and Contents in Cases of Attachments."

Be it enacted by the legislature of the State of Florida:

That section 1658 of the Revised Statutes of the State of Florida be amended so as to read as follows:

"1658. Service and contents of.—In all cases commenced by attachment where property shall be attached and not retaken by the defendant a notice of the institution of the suit by attachment shall be personally served upon the defendant or shall be published once a week for three months in some newspaper in the county in which the suit is instituted; such notice shall require the defendant and all other persons interested to appear to the action. If the notice be a personal one the time fixed for appearance shall be as in summons *ad respondendum;* and if it be published the time fixed shall be the rule day succeeding the last publication service of the personal notice shall be made at the time fixed for service of summons *ad respondendum* and if made within the State shall be made by the executive officer of the court, but if it be made out of the State it may be made by any person and proof thereof shall be furnished by the affidavit of such person before any judicial officer having a seal in the State where such service is made. If the writs be issued

CLERK'S COPY.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1904.~~ 1905.

No. ~~502.~~ 164.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

F. E. DEER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

FILED JANUARY 13, 1905.

(19,603.)

The defendant on the above dates respectively applied to the plaintiff for provisions and merchandise to feed and supply said bridge crew which was furnished by said C. C. Brock upon a promise of defendant to pay for same to the amount of $17.85, when the pay car came to Caryville, Fla., in July A. D., 1900, which the defendant has never paid and still refuses to pay the said amount, although frequently requested to do so, whereof plaintiff sues and claims forty dollars' damages.

C. C. BROCK, Plaintiff.

Filed Nov. 18th, 1901.

L. L. CHARLES, J. P.

13 Copy of Notice to Defendant.

In Justice Court.

STATE OF FLORIDA,
County of Washington, Dist. No. 3.

To F. E. Deer, defendant, and all others whom it may concern:

You are hereby notified that a writ of garnishment has been issued against you in a case now pending in said court wherein C. C. Brock is plaintiff and F. E. Deer is defendant and that your property in the hands of the Louisville & Nashville Railroad Company has been garnisheed and that unless you appear before L. L. Charles, justice of the peace at Caryville, Florida on or before the 6th day of January A. D. 1902, judgment by default will be entered against you.

C. C. BROCK, Plaintiff.

Caryville, Florida, December 3rd, 1901.

STATE OF FLORIDA,
County of Washington, Dist. No. 3.

Before me the undersigned a justice of the peace in and for dist. No. 3, came H. D. Brock, deputy sheriff of Washington county, Florida, who upon being duly sworn deposes and says that the above notice is a true copy of the several notices he posted Dec. 3rd, 1901, and that one of said notices was posted by him on the front and on the door of the justice of the peace office in Caryville, Florida, according to law.

Signed and subscribed to at Caryville, Florida, December 13th, 1901.

[SEAL.] H. D. BROCK,
Deputy Sheriff.

Sworn to before me Dec. 13th, 1901.

L. L. CHARLES, J. P.

Copy of Answer to Garnishment.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
PENSACOLA, Dec. 2, 1901.

A. E. Edge, ag't, Caryville:

In the case of C. C. Brock *vs.* F. E. Deer, L. & N. R. R. Co.
14 garnishee, answer returnable today. Please answer for the garnishee by filing this letter with the court, L. L. Charles, J. P. that the company is indebted to the defendant F. E. Deer in the sum of fifty 75/100 (50.75) dollars. It is claimed by def't's att'y, that he was under contract in Ala., that the attachment is illegal.

Of this the courts will decide.

Yours, &c.,
F. B. BONIFAY,
Ag't L. & N. R. R. Co.

Filed rule day in Dec. 1901, being 2nd day of said month.
L. L. CHARLES, J. P.

Copy of Summons to L. & N. R. R'd Co.

STATE OF FLORIDA,
Washington County, Dist. No. 3.

In the name of the State of Florida.

To the Louisville & Nashville R. R. Co., a corporation doing business in Florida:

You are hereby required personally to be and appear before a justice court to be holden at Caryville, Florida, on the 2nd day of December, A. D. 1901, then and there in a certain matter wherein C. C. Brock is plaintiff and F. E. Deer, defendant in a claim of plaintiff of $19.85 to set forth upon oath what goods and chattels, rights and credits, money or effects were in your hands, custody or control at the service of this notice or since belonging to the said defendant, and in what you are indebted to him. Herein fail not.

Given under my hand this 18th day of November, A. D. 1901.
W. O. HAMMONDS,
Special Constable.

Served this writ on J. A. Garrett ag't of L. & N. R. R. Co., at Caryville, Florida, and he personally accepted service.
Nov. 18th, 1901.

W. O. HAMMONDS,
Special Constable.

I hereby accept service.

J. A. GARRETT,
Ag't L. & N. R. R. Co.

Filed Nov. 18th, 1901.
L. L. CHARLES, J. P.

15 Copy of Motion of C. C. Brock for Default, Jan'y 6th, 1902.

C. C. BROCK } Civil Action for $19.85.
vs.
F. E. DEER. } L. & N. R. R. Co., Garnishee.

Now comes C. C. Brock in person this rule day, the 2nd day of January 1902, and moves the court enter a default against F. E. Deer for want of his appearance this day in the above cause now pending wherein C. C. Brock is pl'ff and F. E. Deer is defendant and The L. & N. R. R. Co. is garnishee.

Signed in open court at Caryville, Fla., January 6th, A. D. 1902.

C. C. BROCK, Plaintiff.

Filed Jan'y 6th, 1902.

L. L. CHARLES, J. P.

Copy of Motion for Final Judgment by C. C. Brock, Plaintiff.

C. C. BROCK } Civil Action for $19.85. Garnishment of Louisville
vs. and Nashville Railroad Company.
F. E. DEER. }

1902.

January 7th.—Now comes the plaintiff C. C. Brock in person and moves the court give final judgment in the cause now pending wherein C. C. Brock is plaintiff and F. E. Deer is defendant.

Signed at Caryville, Florida, Jan. 7th, A. D. 1902.

C. C. BROCK, Plaintiff.

Filed January 7th, 1902.

L. L. CHARLES, J. P.

Copy of Examination of C. C. Brock in Writing.

STATE OF FLORIDA, }
County of Washington, Dist. No. 3. }

Before me the undersigned justice of the peace in and for district No. 3, State and county aforesaid appeared C. C. Brock, who upon his oath and duly sworn says he is the identical person who is plaintiff in the case now pending in justice court, dist. No. 3, in the aforesaid county and State, wherein C. C. Brock is plaintiff and F. E. Deer is defendant, that F. E. Deer is justly indebted to him, said C. C. Brock in the sum of $19.85, with interest included, that no part of this debt has been paid, that no payment has been made to
16 him the said C. C. Brock nor to his agent or to any one for his use, that the amount is legal, just, true and correct, that

the defendant was served with published notices as the law requires that the said F. E. Deer was *due* him the said C. C. Brock upon an open store account past due. The plaintiff C. C. Brock further swears that he is entitled to final judgment and execution for the amount sued on with costs.

Signed at Caryville, Fla., January 7th, 1902.

C. C. BROCK, Plaintiff.

Sworn to before me at Caryville, Florida, January 7th, 1902.

L. L. CHARLES, J. P.

Filed January 7th, 1902.

L. L. CHARLES, J. P.

Copy of Final Judgment as Entered on Page 105, Justice Docket, Dist. No. 3, Washington County, Florida.

In Justice Court, Dist. No. 3, Washington Co., Florida.

C. C. BROCK
vs.
F. E. DEER.

1902.

January 7th.—It having been entered by this court rule day January 6th, 1902, upon motion of plaintiff, C. C. Brock, a default against defendant F. E. Deer for want of appearance,

Now comes C. C. Brock in person on this the 7th day of January A. D. 1902, and by motion asks for final judgment against the defendant F. E. Deer. The service of this suit having been by publication as required by law in justice of the peace court, and this action being on an open account, C. C. Brock the plaintiff being required to be examined under oath in writing is filed this day, January 7th, 1902, respecting any payments that have been made by the defendant to the plaintiff or his agent or to any one for his use on the account of the demand sued on as described in the declaration, and this court having assessed the amount which the plaintiff is entitled to recover for principal and interest on said account at $19.98—nineteen dollars and ninety-eight cents,

It is now therefore considered that the plaintiff do recover of the said defendant, F. E. Deer and the Louisville and Nashville Railroad Company garnishee the said sum of ($19.98) nineteen dollars and ninety-eight cents, and also the further sum of four dollars and thirty-eight cents cost $4.38. Total amount $24.36.

17 For which said sum let execution issue.

This January 7th, A. D. 1902.

L. L. CHARLES,
Justice of the Peace.

Copy of Receipt of C. C. Brock for the Amount of Judgment Due Him.

Justice Court, Dist. No. 3, Washington County, Florida.

C. C. BROCK
vs.
F. E. DEER.

Received this day, January 11th, 1902, of L. L. Charles, justice of the peace, the sum of nineteen dollars and ninety-eight cents, pay in full of acct. against F. E. Deer.

Caryville, Florida, January 11th, 1902.

C. C. BROCK.

Filed Jan. 11th, 1902.

L. L. CHARLES, J. P.

STATE OF FLORIDA,
County of Washington, District No. 3.

I, L. L. Charles, a justice of the peace, for district No. 3, of Washington county, Florida, and also the clerk of said justice court, hereby certify that the foregoing sheets No. 1 to 10 inclusive, contain a full, true and correct copy of the proceedings had in said justice court in and for the said district No. 3, in the county of Washington, State of Florida, in the case of C. C. Brock, plaintiff, *vs.* F. E. Deer, defendant, and the Louisville & Nashville Railroad Company, garnishee, as appears of record in my official docket, at pages 90 and 105.

Given under my hand and seal of office this the 15th day of February, A. D. 1902.

[SEAL.] L. L. CHARLES,
Justice of the Peace and Clerk of the Justice Court
for District No. 3, Washington County, Florida.

STATE OF FLORIDA,
County of Washington, District No. 3.

18 I, L. L. Charles, a justice of the peace, in and for said district, county and State, do certify that I am the presiding magistrate in the justice court of district No. 3, in the county of Washington, State of Florida, and that as such presiding magistrate I act as clerk of said justice court; that the certificates under my official signature and seal hereto attached are in due form, and the records or copies, which said certificates authenticate are by the laws of Florida admissible in evidence in any court within the State of Florida.

Witness my hand and official seal this the 15th day of February, A. D. 1902.

L. L. CHARLES,
[SEAL.] Justice of the Peace and Clerk of the Justice Court for District No. 3, Washington County, Florida.

STATE OF FLORIDA,
County of ——.

I, H. Clay Crawford, secretary of state of the State of Florida, hereby certify that L. L. Charles whose genuine signature appears to the annexed papers, was, at the time of said signing, and at the time of the proceedings set forth in said papers, an acting justice of the peace in and for district No. 3 of the county of Washington, State of Florida, duly sworn and commissioned, and that his commission was dated the 8th day of January 1901, and will expire on the — day of January 1905.

I, the said H. Clay Crawford, as such secretary of state of the State of Florida, further certify that all his official acts as such justice of the peace and as clerk of said justice court are entitled to full faith and credit in all courts throughout the State of Florida.

Given under my hand and seal of office this the 19th day of February, 1902.

[SEAL.] H. CLAY CRAWFORD.
Secretary of State.

In the City Court of Montgomery.

F. E. DEER
vs.
LOUISVILLE AND NASHVILLE RAILROAD Company.
} Appeal from the Justice Court of Hon. B. H. Screws.

19 Motion to Strike.

Comes the plaintiff and moves the court to strike from plea numbered two, the matter therein purporting to be the statutes of the State of Florida, and also the matter attached to said plea and purporting to be a certified copy of the proceedings had in the court of L. L. Charles in the State of Florida; and as grounds of this motion assigns the following:

1st. Said matters are evidence and not pleading.

2nd. Said matters make said plea prolix and are in violation of sections 3285, 3286 and 3294 of the Code of 1896.

W. F. HERBERT,
C. P. McINTYRE,
Att'ys for Plaintiff.

Filed in office, April 21, 1902.

H. H. MATTHEWS, Clerk.

In the City Court of Montgomery.

F. E. DEER
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Demurrer to Plea Two.

Comes the plaintiff and demurs to the second plea filed in the above entitled cause and as grounds of this demurrer assigns each of the following:

1st. Said plea fails to aver that the plaintiff was a resident of the State of Florida at the time the suit referred to in said plea was instituted or during the pendency of the same.

2nd. Said plea fails to aver that the plaintiff was a resident of the State of Florida at the time said suit was commenced or that he was ever served personally with process while in the State of Florida at the commencement of said suit or at any time during the pendency thereof.

3rd. That said plea fails to aver that the plaintiff was a resident of the State of Florida at the commencement of said suit, or that he was ever personally served with process in said suit.

W. F. HERBERT,
C. P. McINTYRE,
Att'ys for Plaintiff.

Filed in office. April 21, 1902.

H. H. MATTHEWS, Clerk.

20 In the City Court of Montgomery.

F. E. DEER
vs.
L. & N. R. R. Co.

Plaintiff's Replication.

Comes the plaintiff and by way of replication to the second plea of the defendant says, that neither at the commencement of said suit nor at any time during the pendency thereof was plaintiff a resident of the State of Fla. or in said State of Fla., but that prior to, and during all of said time plaintiff was a resident citizen of the State of Ala., and was in the State of Ala., that plaintiff was never served with any process at the commencement of said cause, nor was he served with any process during the progress of the same to its termination; that plaintiff had no notice that he was ever sued in the State of Fla. until judgment had been rendered against him;

that he did not voluntarily in said cause appear and submit to the jurisdiction of the court; that the debt sued for in this cause and to which the second plea was interposed is for services rendered by the plaintiff to the defendant in the State of Alabama, and that said debt was to be paid to plaintiff by the defendant in the State of Ala., and that said debt is the same debt condemned by the garnishment proceedings in the State of Fla. set out in the second plea of the defendant.

W. F. HERBERT,
C. P. McINTYRE,
Att'ys for Plaintiff.

Filed in office, June 6, 1902.

H. H. MATTHEWS, Clerk.

In the City Court of Montgomery, Alabama.

F. E. DEER
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Comes the defendant and demurs to the replication filed by plaintiff in above entitled cause, to defendant's second plea, and for grounds of demurrer, assigns each of the following:

Demurrer to Replication.

First. Because it is not alleged or shown in said replication that the judgment obtained against the plaintiff and against the garnishee in said suit in the State of Florida was not in all things regular, and in accordance with the laws of the State of Florida.

21 Second. Because it is not alleged or shown in said replication that the Louisville & Nashville Railroad Company could not be sued as garnishee in said cause in the State of Florida under the laws of the State of Florida.

Fourth. Because it is not alleged or shown in said replication that any duty devolved upon this defendant to give notice to the plaintiff that said suit in the State of Florida had been commenced against him and against this defendant, as defendant and garnishee respectively.

Fifth. Because it is not alleged or shown in said replication that said F. E. Deer was not served by publication, as provided by the statute laws of the State of Florida, in said suit in said Florida court.

Sixth. Because it is not alleged or shown that this defendant could have avoided the payment of the judgment rendered against it as garnishee in said Florida court, under the laws of the State of Florida.

by a justice of the peace or county judge, the publication shall be only for one month, and when the amount of the debt claimed does not exceed twenty dollars the notice may be posted for one month in three public places in the county instead of being published in a newspaper."

"Approved May 31, 1899."

"1608. Docket.—Every justice of the peace shall keep a docket book in which he shall make fair and accurate entries of all causes brought before him, and a minute of all the proceedings, including the service and return of process, the appearance of such parties as may appear, the fact of trial, whether by the court or jury, the verdict of the jury or finding by the justice, the judgment, including damages and costs separately stated. The issuing of execution and to whom issued, with the date thereof and the return thereon, and a marginal memorandum of the items of all costs, including justice's fees, sheriff's or constable's fees, and witness' fees; which docket, or a certified copy thereof shall be evidence of the matters therein stated."

7 And defendant having fully answered, prays judgment of this honorable court.

GEO. W. JONES,
Attorney for Defendant.

Filed in office, April 21, 1902.

H. H. MATTHEWS, Clerk.

EXHIBIT "A" TO DEFENDANT'S SECOND PLEA.

STATE OF FLORIDA,
County of Washington, District No. 3.

Justice Court, District No. 3.

Certified copy of docket and papers in case of—

C. C. BROCK
v.
F. E. DEER. } Civil Action. $19.85.

Louisville and Nashville R. R'd Co., garnishee
Copy of docket justice court dist. No. 3.
Washington county, Florida. L. L. Charles, justice of the peace.

C. C. BROCK
v.
F. E. DEER. } Civil Action for $19.85.
Garnishment of L. & N. R. R'd Co.

1901.
Nov. 18.—Affidavit made by C. C. Brock Nov. 18, 1901.
" " Affidavit filed Nov. 18, 1901—process filed Nov. 18, 1901.

Nov. 18.—Writ of garnishment issued with summons *ad res.* and placed in hands of W. O. Hammonds, special constable Nov. 18, 1901. Returnable rule day Dec. 1901.

Nov. 18.—Writ returned executed and service accepted by J. A. Garrett, agent of L. & N. R. R. Co., at Caryville, Florida.

" " Writ filed Nov. 18th.

Nov. 18.—Summons in the hands of H. D. Brock, D. S.

" " Declaration filed by plaintiff Nov. 18, 1901.

Dec. 2nd.—Rule day in Dec'r.—Answer of L. & N. R. R. Co. made by F. B. Bonifay, ag't Louisville and Nashville Railroad Company, that they have in their hands fifty dollars & 75/100 ($50.75) belonging to F. E. Deer. Answer filed Dec. 2nd, 1901.

Dec. 3rd.—Notices having been posted in 3 public places in district No. 3. giving notice to defendant for four (4) weeks—

" " Summons returned Dec. 2nd, 1901 by H. D. Brock, D.S.

" " No service can be had.

1902.

January 6th.—Rule day in January A. D. 1902.—The defendant F. E. Deer having been given notice as the law directs for such cases, and having failed to appear, it is now on this the 6th day of January, 1902, upon motion of C. C. Brock plaintiff, considered by the court that the said defendant is in default for want of appearance to this action. This the 6th day of January A. D. 1902.

L. L. CHARLES,
Justice of the Peace.

8

1902.

January 7th.—Upon motion of plaintiff for final judgment against F. E. Deer, C. C. Brock was examined under oath in writing and filed this day Jan'y 7th 1902, and judgment is hereby entered upon page 105 of this docket transferred to page 105.

1902.

January 7th.—It having been entered by this court rule day, January 6th, 1902 upon motion of plaintiff C. C. Brock, a default against defendant F. E. Deer for want of appearance,

Now comes C. C. Brock in person on this the 7th day of January A. D. 1902, and by motion asks for final judgment against the defendant F. E. Deer, the services of this suit having been by publication as required by law in justice of the peace court, and this action being on an open account, C. C. Brock, the plaintiff being required to be examined under oath in writing, which writing is filed this day, January the 7th, A. D. 1902, respecting any payments that have been made by the defendant to the plaintiff or his agent or to

any one for his use on account of the demand sued on as described in the declaration and this court having assessed the amount which the plaintiff is entitled to recover for principal and interest on said account at ($19.98) nineteen dollars and ninety-eight cents,

It is now therefore considered that the said plaintiff do recover of the said defendant F. E. Deer and The Louisville and Nashville Railroad Company garnishee the said sum of $19.98—nineteen dollars and ninety-eight cents, and also the further sum of four dollars and thirty-eight cents cost. Total amount $24.36. For which said sum let execution issue. This January 7th, A. D. 1902.

L. L. CHARLES,
Justice of the Peace.

January 11th, 1902.—Received of L. & N. R. R. Co. this Jan. 11, 1902 paid by J. A. Garrett, agent at Caryville $24.36 in full for debt and costs.

January 11th, 1902.—Paid C. C. Brock $19.98 Jan. 11, 1902—receipt filed this day.

L. L. CHARLES,
Justice of the Peace.

9 Copy of Process.

STATE OF FLORIDA,
County of Washington, Dist. No. 3.

In Justice Court.

C. C. BROCK, Plaintiff,
vs.
F. E. DEER, Defendant. } Civil Action.

To L. L. Charles, justice of the peace:

Please issue a summons *ad respondendum* in the above action wherein the plaintiff claims damages forty dollars returnable to the first Monday in December A. D. 1901.

C. C. BROCK, Plaintiff.

Filed Nov. 18, 1901.
L. L. CHARLES, J. P.

CARYVILLE, FLORIDA, Nov. 18th, 1901.

Mr. F. E. Deer in account with C. C. Brock (successor to C. C. Brock & Co.), dealer in general merchandise.

1900.		
June 4th.	6 hams 5.50, sugar $2.30, plates 50, pepper 20.....	$8.50
June 6th.	Dish pan	.35
June 7th.	Bbl. flour 4.50, trunk $4.50	9.00
	Int. to Nov. 18", 1901	2.00
		$19.85

STATE OF FLORIDA,
County of Washington, Dist. No. 3.

Before me the undersigned, a justice of the peace in and for said dist., county and State, came C. C. Brock who upon being sworn, deposes and says that the above account is correct and just, and that no part has been paid.

C. C. BROCK.

Sworn to before me at Caryville, Fla., Nov. 18th, A. D. 1901.

L. L. CHARLES, J. P.

[SEAL.]

Filed Nov. 18th, 1901.

L. L. CHARLES, J. P.

10 Copy of Affidavit in Garnishment.

In Justice Court, Dist. No. 3, Washington County, Fla.

C. C. BROCK
vs.
F. E. DEER.

Before me, justice of the peace, in and for the county of Washington, dist. No. 3, State aforesaid, duly commissioned and qualified, personally came C. C. Brock, who being duly sworn, says that he does not believe that the defendant F. E. Deer will have in his possession after execution shall be issued, visible property in this State and said county upon which a levy can be made sufficient to satisfy a judgment or execution for the sum of $19.85, which he believes he shall be able to obtain in the said suit, and thereupon prays that a writ of garnishment may issue against Louisville and Nashville R. R'd Company, who plaintiff has reason to believe has in their possession or control goods, moneys, chattels or effects belonging to defendant.

C. C. BROCK.

Sworn to and subscribed before me this 18th day of November, A. D. 1901.

L. L. CHARLES, [SEAL.]
Justice of the Peace.

[SEAL.]

Filed Nov. 18th, 1901.

L. L. CHARLES,
Justice of the Peace.

Copy of Writ of Garnishment.

THE STATE OF FLORIDA,
County of Washington, Dist. No. 3.

In the name of the State of Florida.

To the sheriff or any lawful officer of said county:

Wherein C. C. Brock has this day made oath before me in a suit wherein C. C. Brock is plaintiff and F. E. Deer is defendant that he believes he will recover judgment in said suit in the sum of nineteen dollars and eighty-five cents ($19.85) and does not believe that said defendant will have visible property sufficient in said State and county to satisfy such judgment if obtained, and plaintiff suggesting that the Louisville and Nashville Railroad Company has goods, effects or money in their hands, possession or control belonging to the defendant.

11 This is therefore to command you to summon the said Louisville and Nashville Railroad Company to be and appear before a court to be held at Caryville, Florida, on the 2nd day of December, A. D. 1901 in the above mentioned suit and state on oath in writing to be filed in said court whether at the time of the answer they are indebted to the said defendant or were indebted at the time of the service of this writ or at any time between such periods, and in what sum or sums, or what goods, money, chattels or effects of defendant they had at the time of their answer shall be in their hands, possession or control or had at the time of the service upon them of this writ or at any time between such periods whether they know of another person indebted to said defendant, or who may have any of the effects of said defendant in their hands.

Given under my hand and seal this the 18th day of November, A. D. 1901.

L. L. CHARLES, [SEAL.]
[SEAL.] Justice of the Peace, Dist. No. 3,
Washington County, Florida.

Filed Nov. 18th, 1901.
L. L. CHARLES, J. P.

CARYVILLE, FLA, Nov. 18, 1901.

I hereby appoint W. O. Hammond, special constable to execute this writ.

L. L. CHARLES, J. P.

Received the within Nov. 18th, 1901, and executed by leaving copy with J. A. Garrett, ag't, L. & N. R. R'd, at Caryville, Fla., Nov. 18th, 1901.

W. O. HAMMOND,
Special Constable.

I accept service.

J. A. GARRETT, Agent.

Copy of Summons *ad Res.*

STATE OF FLORIDA,
Washington County, Dist. No. 3.

In the name of the State of Florida.

To the sheriff or any constable of said county:

You are hereby commanded to summon F. E. Deer to appear before me at Caryville, Florida, on 2nd day of December, A. D.
12 1901 to answer in a civil action upon a claim by garnishment of the Louisville & Nashville Railroad Company wherein C. C. Brock is plaintiff and F. E. Deer is defendant of nineteen dollars an- eighty-five cents ($19.85) and herein fail not or judgment will be given against him by default.

Given under my hand and seal at Caryville, Florida, November 18th 1901.

L. L. CHARLES,
[SEAL.] Justice of the Peace, Dist. No. 3,
Washington Co., Fla.

Filed Dec. 2nd, 1901.

L. L. CHARLES, J. P.

Came to hand on the 18th day of November 1901. The defendant does not reside in this State and no service can be had, this Dec. 2nd, 1901.

J. A. McKEITHEM, Sheriff,
By H. D. BROCK, D. S.

Copy of Declaration.

In Justice Court, Dist. No. 3, Washington County, Florida.

C. C. BROCK
vs.
F. E. DEER.

The plaintiff, C. C. Brock, in person sues the defendant F. E. Deer, for that whereas the defendant to-wit, on or about June 4th, 6th and 7th A. D. 1900, the defendant was engaged as boss of a bridge crew of hands and furnishing meals from a boarding car on the line of the Pensacola and Atlantic division of the Louisville & Nashville Railroad Company in the absence of Turner Brown the regular boss who was at Hot Springs, Arkansas, taking a course of treatment.

28 In the Supreme Court of Alabama.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellant,
vs.
F. E. DEER, Appellee.

Assignment of Errors.

Comes the appellant by attorney, and says that, in the court below, manifest error has intervened, to the prejudice of appellant, as follows, to-wit:

1st. The court below erred in overruling the demurrers interposed by appellant to appellee's replication to plea No. 2.

2nd. The court below erred in rendering judgment in favor of appellee against appellant.

GEO. W. JONES,
Attorney for Appellant.

29 Orders and Judgment of the Supreme Court of Alabama.

(Min. 54, page 52.)

SUPREME COURT, TUESDAY, Dec. 16, 1902.

The court met pursuant to adjournment.
Present: All the justices.

* * * * * * *

3 Div., 366, Montgomery City Court.

LOUISVILLE & NASHVILLE RAILROAD CO.
v.
F. E. DEER.

Come the parties by attorneys, and submit this cause on briefs for decision.

* * * * * * *

(Min. 56, page 10.)

SUPREME COURT, THURSDAY, November 17th, 1904.

The court met pursuant to adjournment.
Present: All the justices.

3 Div., 366, Montgomery City Court.

LOUISVILLE & NASHVILLE RAILROAD CO.
vs.
F. E. DEER.

Come the parties by attorneys, and the record and matters therein assigned for errors, being submitted on briefs and duly examined

and understood by the court, it is considered that in the record and proceedings of the city court there is no error. It is therefore considered that the judgment of the city court be in all things affirmed. It is also considered that the appellant, and J. M. Falkner and Geo. W. Jones, sureties on the appeal bond, pay the amount of the judgment of the city court and ten per centum damages thereon and interest and the costs of appeal of this court and of the city court.

* * * * * * *

30 Docket Entries and Orders of the Supreme Court of Alabama.

LOUISVILLE & NASHVILLE R. R. Co.
vs.
F. E. DEER. } Montgomery City Court.

Oct. 18, 1902.—Transcript filed.
Dec. 16, " Submitted on briefs.
Nov. 17, 1904.—Affirmed.
Nov. 18, " Certificate of affirmance issued.
Nov. 23, " Application for rehearing filed.
Nov. 23, " Certificate of affirmance recalled, order Tyson, J.
Nov. 28, " Certificate of affirmance returned.
Dec. 22, " Application for rehearing overruled.
Dec. 29, " Certificate of affirmance re-issued.

31 (Copy of Opinion, S. C. Ala.)

THE STATE OF ALABAMA,
Judicial Department.

The Supreme Court of Alabama, November Term, 1904, 3 Div., 366.

LOUISVILLE & NASHVILLE R. R. Co.
v.
F. E. DEER.

Appeal from Montgomery City Court.

SHARPE, *J.*:

In overruling the demurrer to the replication to the second plea and also in rendering judgment for the plaintiff upon the agreed statement of facts the trial court acted in accordance with the principles declared by this court in Louisville & Nashville R. Co. *v.* Dooley, 78 Ala. 524; Ala. Great Southern R. Co. *v.* Nash, 118 Ala. 487 and Louisville & Nashville R. Co. *v.* Steiner & Lobman, 128 Ala. 353, to the effect, as bearing upon this case, that the justice's court of the State of Florida was without jurisdiction to render the judgment pleaded here, and on the authority of those cases the judgment appealed from will be affirmed.

32 In the Supreme Court of Alabama.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellant,
vs.
F. E. DEER, Appellee.

I, Rob't F. Ligon, clerk of the supreme court of the State of Alabama, by virtue of the annexed writ of error, and in obedience thereto, do hereby certify that the foregoing pages numbered from 1 to 31, both inclusive, contain a true, full and complete transcript of the records and proceedings had in said court, in the cause of Louisville & Nashville Railroad Company, appellant, *vs.* F. E. Deer, appellee, (3rd division No. 366,) together with a copy of the orders, judgment and opinion of the said supreme court in said cause, as the same appear of record and on file in this office.

I further certify, that an application for a rehearing was filed in the said supreme court in said cause on November 23, 1904; that pending said application for a rehearing, the certificate of affirmance in said cause was withdrawn; and that the application for rehearing was by said supreme court overruled on December 22, 1904—the judgment of the supreme court at that date becoming final.

In testimony whereof, I have hereunto affixed my official signature as clerk of the supreme court of Alabama, and have caused the seal of said supreme court to be hereunto affixed, at the capitol, in the city of Montgomery, Alabama, on this the 4th day of January, A. D. 1905.

[Seal of the Supreme Court of Alabama.]

ROBERT F. LIGON,
Clerk of the Supreme Court of Alabama.

33 LOUISVILLE & NASHVILLE RAILROAD COMPANY, Plaintiff in Error,
vs.
F. E. DEER, Defendant in Error.

Bill of Costs on Appeal.

Costs of the Clerk of the Supreme Court of Alabama.

(Code 1896, § 1374.)

Bond	$.50	
Appeal or writ of error	.50	
Taxing cost, copying, and entering satisfaction	.85	
Copying, record and proceedings, for appeal to Supreme Court, U. S.	17.25	(15c.)
Total clerk's cost on appeal	$19.10	

STATE OF ALABAMA,
Montgomery County.

I, Robert F. Ligon, clerk of the supreme court of the State of Alabama, do hereby certify that the above is a true and correct bill of costs on appeal, as provided for by section of the code above cited.

Witness my hand and the seal of the said supreme court, this the 4th day of January, A. D. 1905.

[Seal of the Supreme Court of Alabama.]

ROBERT F. LIGON,
Clerk of the Supreme Court of Alabama.

34 Supreme Court of Alabama.

Filed Jan. 2, 1905. Rob't F. Ligon, Jr., Clerk.

UNITED STATES OF AMERICA,
State of Alabama.

In the Supreme Court of Alabama.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellant,
vs.
F. E. DEER, Appellee.

Petition for Writ of Error.

To the honorable the judges of the supreme court of the State of Alabama:

Your petitioner, The Louisville & Nashville Railroad Company, a corporation created and existing under the laws of the State of Kentucky, respectfully shows that on the 22nd day of December, 1904, this honorable court rendered judgment against petitioner in a certain cause wherein your petitioner, the said Louisville & Nashville Railroad Company, was appellant, and one F. E. Deer was appellee, for the sum of twenty-five $\frac{35}{100}$ dollars, together with interest, damages and costs, amounting in all to seventy-eight & $\frac{15}{100}$ dollars, and, in legal effect, awarded execution thereon, as will appear by reference to the record and proceedings in said cause; that the said supreme court of Alabama is the highest court in the State of Alabama in which decision of said suit can be had; that in said suit the said F. E. Deer, appellee, demanded of your petitioner, certain wages alleged to be due him, and your petitioner relied for its defense, upon a certain final judgment rendered by a court of competent jurisdiction of the State of Florida, on the same identical cause of action,—the proceedings in the State of Florida having been begun before the bringing of this suit, and the said judgment in said

State of Florida having been rendered and paid in full, including costs, before the institution in the State of Alabama of this suit, as will appear by reference to the transcript of the record and proceedings in said cause, and that the said supreme court of Alabama refused to give full faith and credit to the records and judicial proceedings of said court of the State of Florida in violation of section 1, article IV, of the Constitution of the United States, and of
35 the act of Congress entitled "An act to prescribe the mode in which public acts, records and judicial proceedings in each State shall be authenticated so as to take effect in every other State, approved May 26th, 1790," (sec. 905, U. S. Rev. Stat.), and whereby the said decision of the said supreme court is contrary to, and in conflict with, section 1, article IV, of the Constitution of the United States, and of the act of Congress aforesaid.

Wherefore, your petitioner is aggrieved, and prays for a writ of error with citation and supersedeas, returnable to the Supreme Court of the United States, and prays that said writ of error be allowed, and that a transcript of the record and proceedings in said cause, including the said final judgment therein, duly authenticated, may be sent to the said Supreme Court of the United States, as provided by law, and that such other and further proceedings may be had as may be proper in the premises; and also prays that an order be made fixing the amount of security which your petitioner shall give and furnish upon said writ of error; that upon the giving of such security, all further proceedings in this court be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States.

And in duty bound, petitioner will ever pray, etc.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Petitioner,
By GEO W. JONES, Attorney for Petitioner.

Presented this 2d day of January, 1905.

THOS. N. McCLELLAN,
Chief Justice Supreme Ct. of Alabama.

36 Supreme Court of Alabama.

Filed Jan. 2, 1905. Rob't F. Ligon, Jr., Clerk.

In the Supreme Court of Alabama.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellant,
vs.
F. E. DEER, Appellee.

Order Granting Writ of Error.

On this the 2d day of January, 1905, came the appellant, by its attorney, in due time, and filed herein, and presented to the court

its petition, praying for the allowance of a writ of error intended to be urged by it, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the honorable the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the security being now offered by appellant, and approved, the said petition has this day been duly allowed, and it is, therefore, ordered that upon the filing of said bond, with the clerk of this court in the sum of five hundred dollars, it shall operate as a supersedeas, and all other further proceedings in this court be and they are hereby suspended and stayed until the determination of said writ of error by the said Supreme Court of the United States.

Dated this the 2d day of January, 1905.

THOS. N. McCLELLAN,
Chief Justice of the Supreme Court of Alabama.

37 Supreme Court of Alabama.

Filed Jan. 2, 1905. Rob't F. Ligon, Jr., Clerk.

In the Supreme Court of Alabama.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellant,
vs.
F. E. DEER, Appellee.

I, Thomas N. McClellan, chief justice of the supreme court of the State of Alabama, presiding therein at the present time, and upon the argument, hearing and decision of the above entitled cause in said court, do hereby certify that upon the hearing of the said cause, the appellant, The Louisville & Nashville Railroad Company, (defendant in the court below), relied upon for defense, and offered in evidence as shown by the record in said cause, a duly authenticated transcript of the record and proceedings up to, and including a final judgment against, and satisfaction thereof, by the said Louisville & Nashville Railroad Company, in the justice court of Washington county, State of Florida,—said cause being entitled "C. C. Brock, plaintiff, *versus* F. E. Deer, defendant, Louisville & Nashville Railroad Company, garnishee"; that said appellant claimed that the said proceedings and judgment in the said suit in the said court of Washington county, State of Florida was upon the identical cause of action as the one in this case, and the said appellant claimed that it had the right to rely upon the said record, judicial proceedings and judgment under and by virtue of section 1, article IV, of the Constitution of the United States, and the act of Congress entitled "An act to prescribe the mode in which public acts, records and

judicial proceedings in each State shall be authenticated so as to take effect in every other State, approved May 26, 1790" (sec. 905, U. S. Rev. Stat.), and that it was denied the right claimed thereunder; the said the supreme court of Alabama holding and deciding that the said justice court of L. L. Charles, a justice of the peace in and for Washington county, State of Florida, was without jurisdiction to hear and determine said cause and to render the judgment therein pleaded in bar of this action, and thereupon affirmed the judgment of the city court of Montgomery, which proceeded upon the same consideration to judgment for the plaintiff below;
38 no other defense being interposed by the said appellant.

And I further certify that the said supreme court of Alabama, in which judgment was rendered against said appellant, is the highest court in which a decision in said cause could be had in the State of Alabama.

Signed this the 2nd day of January, 1905.

THOS. N. McCLELLAN,
Chief Justice of the Supreme Court of Alabama.

39 In the Supreme Court of the United States.

LOUISVILLE & NASHVILLE RAILROAD COMPANY
vs.
F. E. DEER.

Know all men by these presents: that we, the Louisville & Nashville Railroad Company, as principal and B. J. Baldwin and Geo. W. Jones as sureties, are held and firmly bound unto F. E. Deer, his heirs and assigns, in the sum of five hundred ($500.00) dollars, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 2 day of January, 1905.

The condition of the above obligation is such,—

That whereas, the above bounden, the Louisville & Nashville Railroad Company has prosecuted a writ of error from the Supreme Court of the United States to the supreme court of Alabama, to reverse the judgment rendered in the above entitled cause by the supreme court of Alabama, and desires said writ of error which has been allowed by the Honorable Thos. N. McClellan, chief justice of said supreme court of Alabama, to operate as a supersedeas of said judgment during the pendency of said writ of error;

Now, therefore, if the said Louisville & Nashville Railroad Company shall prosecute said writ of error to effect, or answer all damages and costs if it fails to prosecute said writ of error to effect,

then this obligation shall be null and void; otherwise to remain in full force and effect.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
(Sig.) By GEO. W. JONES,
As its Attorney.
(Sig.) BENJ. J. BALDWIN. [L. S.]
(Sig.) GEO. W. JONES, [L. S.]

Taken and approved this the 2d day of January, 1904.
(Signed) THOS. N. McCLELLAN,
Chief Justice of the Supreme Court of Alabama.

40 Supreme Court of Alabama.

Filed Jan. 2, 1905. Rob't F. Ligon, Jr., Clerk.

Assignment of Errors & Prayer for Reversal.

UNITED STATES OF AMERICA:

In the Supreme Court, —— Term, 1905.

LOUISVILLE & NASHVILLE RAILROAD COMPANY
vs.
F. E. DEER.

And, afterwards, to wit: on the — day of ——, 1905, before the justices of the Supreme Court at the Capitol in the city of Washington, comes the Louisville & Nashville Railroad Company, plaintiff in error, by its attorney, George W. Jones, and says that in the record and proceedings aforesaid, there is manifest error in the particulars following, to wit:

1. The said supreme court of the State of Alabama erred in refusing to give full faith and credit to the records and judicial proceedings of the court of the State of Florida, a duly authenticated transcript of said judicial records and proceedings being offered in evidence on the hearing of the cause in the said supreme court of Alabama, by the appellant therein, (plaintiff in error,) in said supreme court of Alabama, and in rendering judgment against said plaintiff in error contrary to section 1, article IV, of the Constitution of the United States and the act of Congress entitled "An act to prescribe the mode in which public acts, records and judicial proceedings in each State shall be authenticated so as to take effect in every other State, approved May 26, 1790." (Sec. 905. U. S. Rev. Stat.)

Whereas by the law of the land, the said judgment ought to have been given for the said Louisville & Nashville Railroad Company

Seventh. Because the fact, if it be a fact, that plaintiff was not a resident of the State of Florida during the pendency of said suit in Florida, or at the commencement of said suit, is no answer to defendant's second plea.

Eighth. Because it is not alleged or shown in said replication that this defendant could have avoided the payment of the money due by it to the plaintiff in satisfaction of the judgment rendered against it as garnishee in the said suit in the State of Florida.

Ninth. Because it is not alleged or shown that the Louisville & Nashville Railroad Company was not regularly and legally served with writ of garnishment in said Florida suit.

Tenth. Because it is not alleged or shown that judgment was not regularly and legally had against the defendant, the said F. E. Deer, in said Florida suit, and against this defendant as garnishee.

Eleventh. Because it is not alleged or shown that, notwithstanding plaintiff, said F. E. Deer, did not voluntarily appear and submit himself to the jurisdiction of said Florida court, he could not, under the statutes of Florida, be sued in said court by publication, and that this defendant could not be sued in said court as garnishee when the defendant in such suit was served by publication.

GEO. W. JONES,
Attorney for Defendant.

22 Filed in office, June 6, 1902.

H. H. MATTHEWS, Clerk.

THURSDAY, June 5", A. D. 1902.

Court met pursuant to adjournment.
Present: The Hon. A. D. Sayre, judge presiding.

F. E. DEER
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a Corporation. } 2068. Appeal.

Judgment.

This day came the parties by their attorneys, and the plaintiff's motion to strike plea number two, being argued by counsel and understood by the court, it is considered and ordered by the court, and it is the judgment of the court that the said motion to strike plea number two be and the same is hereby overruled. And the plaintiff's demurrer to plea number two being argued by counsel, and understood by the court, it is considered and ordered by the court, and it is the judgment of the court that the said demurrer to plea number two be and the same is hereby overruled.

FRIDAY, June 20th, A. D. 1902.

Court met pursuant to adjournment.
Present: The Hon. A. D. Sayre, judge presiding.

F. E. DEER
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a Corporation. } 2068. Appeal.

Judgment.

This day came the parties by their attorneys and the defendant's demurrer to plaintiff's replication to plea two being argued by counsel and understood by the court, it is considered and ordered by the court, and it is the judgment of the court that the said demurrer to plaintiff's replication to plea two (2) be and the same is hereby overruled. And issue being joined between the parties, now after hearing the evidence, the court being of the opinion, it
23 it is considered and ordered by the court and it is the judgment of the court, that judgment be and the same is hereby rendered for the plaintiff and against the defendant for the sum of twenty-five and 35/100 dollars.

It is therefore considered and ordered by the court that the plaintiff have and recover of the defendant and J. M. Falkner and Geo. W. Jones sureties upon its appeal bond, the said sum of twenty-five and 35/100 ($25.35) dollars together with the costs in this behalf expended for which let execution issue.

STATE OF ALABAMA,
Montgomery County.

In the City Court of Montgomery.

F. E. DEER
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Bill of Exceptions.

Be it remembered that on the trial of the above entitled cause in the city court of Montgomery, Alabama, before Hon. A. D. Sayre, judge of said court, without a jury, at the February term 1902, the following proceedings, among others, were had, viz:

The case was tried upon the following agreed statement of facts, said statement of facts being duly signed by the attorneys for both plaintiff and defendant and regularly filed in court, to-wit:

In the City Court of Montgomery.

F. E. DEER
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY.

"Agreed Statement of Facts.

"It is agreed by and between the plaintiff and the defendant in the above entitled cause as follows:

"That the Louisville & Nashville Railroad Company was, prior to the commencement of this suit, indebted to the plaintiff, F. E. Deer, in the amount sued for, to-wit: $24.36, for services rendered by plaintiff for defendant during the month of October, 1901, but that after the accrual of the above indebtedness and before the commencement of this suit, to-wit: on November 18th, 1901, a suit was commenced in the justice of the peace court of L. L. Charles, in Washington county, Florida, by one C. C. Brock, plaintiff, *vs.* F. E. Deer, defendant, (who is the plaintiff in the case at bar,) and the Louisville & Nashville Railroad Company, garnishee (the defendant in the case at bar);

24 "That in said suit of C. C. Brock, plaintiff, *vs.* F. E. Deer, defendant, and Louisville & Nashville Railroad Company, garnishee, judgment was duly rendered against the Louisville & Nashville Railroad Company as garnishee on the 7th day of January, 1902, in the sum of $19.98 and the costs amounting to $4.38, aggregating the said sum of $24.36;

"That the Louisville & Nashville Railroad Company, prior to the commencement of the suit of F. E. Deer *vs.* Louisville & Nashville Railroad Company, had paid into the said justice court of L. L. Charles in Washington county, Florida, the said sum of $24.36 in satisfaction of the said judgment rendered against it as garnishee in the said case of C. C. Brock, plaintiff *vs.* F. E. Deer, defendant, and the Louisville & Nashville Railroad Company garnishee:

"That the proceedings in the said case of C. C. Brock, plaintiff *vs.* F. E. Deer, defendant and Louisville & Nashville Railroad Company garnishee, in said Justice Charles' court, were strictly in accordance with the statute laws of the State of Florida, and are duly authenticated according to law, and that the statutes of the State of Florida, set forth in defendant's pleas in this case, are true and correct copies of the statutes of said State, duly enacted in accordance with the laws of the State of Florida and properly authenticated;

"That in the absence of the president, vice-president, or other head of the Louisville & Nashville Railroad Company, and in the absence of the cashier, treasurer, secretary, general manager and any director of the Louisville & Nashville Railroad Company, the garnishment summons in said suit of C. C. Brock, plaintiff *vs.* F. E. Deer, defendant and Louisville & Nashville Railroad Company,

garnishee, was regularly served upon a business agent of the Louisville & Nashville Railroad Company, resident of the county in which said suit was brought in accordance with the statutes of the State of Florida.

"That the Louisville & Nashville Railroad Company is a corporation created, organized and existing under the laws of the State of Kentucky, and doing business in numerous States, including the States of Kentucky, Florida and Alabama; and that under
25 the statute laws of the States of Florida and Alabama, said corporation can be sued as garnishee, or otherwise, in either of said States, by service of process upon any agent of said railroad company residing within such State, and that the process of garnishment in said garnishment proceedings in said State of Florida was duly and regularly served upon a business agent of said railroad company, resident of the county in which said suit was brought, in strict conformity to the statutes of the State of Florida; and that the summons in the said suit of F. E. Deer *vs.* Louisville & Nashville Railroad Company in this court was regularly served upon an agent of the Louisville & Nashville Railroad Company in the State of Alabama, as provided by the statutes of said State of Alabama;

"That F. E. Deer was a resident of the State of Alabama at the time of the commencement of the suit against him in Justice Charles' court, and was not then nor at any time during the pendency of said suit in the State of Florida, and was never personally served with process in said suit, and did not appear in said cause either in person or by attorney, but that notices were posted for one month in three public places in the county of Washington, State of Florida, as provided for by an act of the legislature of the State of Florida amending section 1658 of the Revised Statutes of the State of Florida, approved May 31, 1899;

"That the money which was due said F. E. Deer by the Louisville & Nashville Railroad Company, and which was condemned in the said Florida court, as above set out, was due the said Deer for services performed by him for the Louisville & Nashville Railroad Company in the State of Alabama and is now sued for by him under a contract made in Alabama.

(Signed) W. F. HERBERT,
Attorney for Plaintiff.

(Signed) GEO. W. JONES,
Attorney for Defendant."

The foregoing was all the evidence in the case.

The court rendered a judgment in favor of the plaintiff against the defendant for the sum of $25.35.

The defendant thereupon excepted to the action of the court in rendering judgment in favor of the plaintiff against the defendant, and defendant, now, in term time, tenders this its bill of exceptions and prays that the same may be signed, sealed and made a

26 part of the record, which is accordingly done on this 25th day of June 1902.

A. D. SAYRE,
Judge of the City Court of Montgomery.

Filed in office June 25th, 1902.

H. H. MATTHEWS, Clerk.

Supersedeas Bond.

THE STATE OF ALABAMA, }
Montgomery County. }

Know all men by these presents, that we, Louisville & Nashville Railroad Company, a corporation, and J. M. Falkner and Geo. W. Jones, are held and firmly bound unto F. E. Deer in the just and full amount of ninety dollars, for which payment well and truly to be made and done, we bind ourselves, our heirs, executors and administrators, severally and firmly, by these presents.

Sealed with our seals, and dated this 23rd day of June A. D. 1902.

The conditions of the above obligation are such, that whereas at the February term A. D. 1902, of the city court of Montgomery, F. E. Deer recovered a judgment against the said Louisville & Nashville Railroad Company, for the sum of twenty-five and 35/100 dollars, and whereas, the said Louisville & Nashville Railroad Company hath this day made application for an appeal to the supreme court of said State to reverse said judgment, as also a supersedeas of the execution of said judgment, which has been granted by entering into this bond.

Now, if the said Louisville & Nashville Railroad Company shall prosecute said appeal to effect, and shall pay and satisfy such judgment as the supreme court may render in this case, then this obligation to be void, otherwise to remain in full force and effect.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, [L. S.]
By J. M. FALKNER, As its Attorney.
J. M. FALKNER. [L. S.]
GEO. W. JONES. [L. S.]

Approved this 23 day of June 1902.

H. H. MATTHEWS,
Clerk City Court of Montgomery.

Filed in office, June 23, 1902.

H. H. MATTHEWS, Clerk.

27 Notice of Writ of Error.

Writ of Error.

The State of Alabama, Montgomery county, to any sheriff of the State of Alabama, Greeting:

You are hereby commanded to summon W. F. Herbert and C. P. McIntyre, attorneys of record of F. E. Deer to appear at the next term of the supreme court of said State, then and there to defend an appeal which Louisville & Nashville Railroad Company, a corporation, has this day sued out, returnable to said court to reverse a judgment which F. E. Deer at the Feb'y term 1902, of the city court of Montgomery recovered against Louisville and Nashville Railroad Company, a corporation, for the sum of twenty-five and 35/100 dollars and make immediate return of this writ &c.

Witness Henry H. Matthews, clerk of said city court, this 23rd day of June, A. D. 1902.

H. H. MATTHEWS,
Clerk of the City Court of Montgomery.

Executed by serving a copy of the within on C. P. McIntyre and on W. F. Herbert, this the 24th day of June 1902.

W. R. WALLER, Sheriff.
W. D. HALL, D. S.

THE STATE OF ALABAMA, }
Montgomery County. }

I, Henry H. Matthews, clerk of the city court of Montgomery in and for said county and State do hereby certify that the foregoing pages numbered from one (1) to twenty-seven (27) inclusive, contain a full, true, and complete transcript of the record and proceedings of said court, in a certain cause lately therein pending wherein, F. E. Deer was plaintiff and the Louisville & Nashville Railroad Company was defendant.

And, I further certify that the said defendant did on the 23rd day of June 1902 pray for, and obtain and appeal to the supreme court of Alabama to reverse said judgment of said city court and also a supersedeas of the execution thereof, and entered into bond with J. M. Falkner and Geo. W. Jones as sureties thereon, which bond has been approved by me.

Witness my hand this the 24th day of September 1902.

H. H. MATTHEWS,
Clerk of the City Court of Montgomery.

Supreme Court of the United States.

OCTOBER TERM, 1904.

NO. 503.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
Plaintiff in Error,

vs.

F. E. DEER.

In Error to the Supreme Court of the State of Alabama.

BRIEF IN BEHALF OF PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

The Federal question presented by the writ of error in this case is, whether the Supreme Court of Alabama, in rendering a judgment in favor of F. E. Deer, and against plaintiff in error, has failed to give full faith and credit to a garnishment judgment previously rendered against plaintiff in error for the same indebtedness by a court of the State of Florida, and whether it has, in rendering said judgment, violated the provisions of Article IV., Section 1, of the Constitution of the United States and of the Act of Congress approved May 26, 1790, entitled "An Act to prescribe the mode in which the public acts, records and judicial proceedings in each State shall be authenticated, so as to take effect in every other State." (U. S. Rev. Stat. 905.)

PROCEEDINGS IN THE FLORIDA COURT.

On November 18th, 1901, a civil action for $19.85 was commenced in the Justice of the Peace Court of L. L. Charles, Washington County, Florida, by C. C. Brock, plaintiff, vs. F. E. Deer, defendant, and the Louisville & Nashville Railroad Company, Garnishee, (Rec. pp. 6-7.)

The defendant (Deer) being a non-resident, service was had upon him by publication, in accordance with the Statutes of the State of Florida. The Louisville & Nashville Railroad Company, as Garnishee, was brought into said court by service of process upon a business agent of said Railroad Company, resident of the county in which said suit was brought, in conformity to the Statutes of the State of Florida.

On rule day, to-wit: December 2d, 1901, the Louisville & Nashville Railroad Company, as garnishee, answered the garnishment process according to its terms, admitting an indebtedness.

On January 7th, 1902, judgment was duly rendered against said F. E. Deer, as defendant, and against said Louisville & Nashville Railroad Company, as Garnishee, for the amount sued for, plus interest and costs, (amounting in the aggregate to $24.36,) and an order was made condemning to the satisfaction of the plaintiff's demands in said suit, the said sum of $24.36, of the amount admitted to be due by said Garnishee to said defendant. (Rec. pp. 7-8.)

On January 11th, 1902, the amount so condemned ($24.36,) was paid by said Garnishee into said court, in satisfaction of said judgment. (Rec. p. 8.)

PROCEEDINGS IN THE ALABAMA COURTS.

On January 27th, 1902, (after the garnishment proceedings aforesaid, and after the payment into the said Florida court of the said sum so condemned,) the said E. F. Deer sued plaintiff in error, (the garnishee,) before B. H. Screws, a Justice of the Peace in Montgomery County, Alabama, for the *identical money* which had been condemned by, and paid into, said Florida court. (Rec. p. 1.)

On April 7th, 1902, the Alabama Justice of the Peace rendered judgment for the amount sued for, to-wit: $24.36 and

costs, in favor of said F. E. Deer, and against plaintiff in error, from which plaintiff in error appealed to the City Court of Montgomery, Alabama. (Rec. pp. 2-3.)

On June 20, 1902, in said City Court of Montgomery, Alabama, the case was tried *de novo,* in accordance with the Statutes of the State of Alabama, and in that court judgment was, on said date, rendered in favor of said Deer against plaintiff in error for the said sum of Twenty-four and 36-100 Dollars, ($24.36) together with interest and costs, amounting in the aggregate to Twenty-five and 35-100 Dollars, ($25.35.) (Rec. p. 21.)

In the trial of said cause in the City Court of Montgomery, plaintiff in error filed its written plea setting up the garnishment proceedings in the Florida court, as a bar to said suit. (Rec. pp. 3, 4, 5, 6.)

On said trial, the record in the Florida case, duly authenticated according to the Act of Congress, was given in evidence, and was the only evidence introduced by plaintiff in error. (Rec. pp. 6-17.)

The case was tried upon an agreed statement of facts, in which it was admitted that the proceedings in the Florida court were strictly in accordance with the statute laws of the State of Florida, and authenticated according to law; that the statutes of the State of Florida set forth in the pleas of plaintiff in error are true and correct copies of said statutes, duly enacted in accordance with the laws of Florida, and properly authenticated. (Rec. pp. 22-23.)

From the judgment of the City Court of Montgomery in favor of said F. E. Deer, the plaintiff in error appealed to the Supreme Court of Alabama, where said judgment was, on December 22, 1904, affirmed. (See copy of opinion of the Supreme Court of Alabama, Rec. p. 27.)

From that judgment, this writ of error was prayed for and granted, and the Honorable Thomas N. McClellan, Chief Justice of the Supreme Court of Alabama, in granting said writ of error, signed a certificate which was made a part of the record, (Rec. p. 31,) certifying, among other things, that the plaintiff in error relied upon for defense, and offered in evidence in said cause, a duly authenticated transcript of the record and proceedings up to and including a final judgment against and satisfaction thereof, by the said Louisville &

Nashville Railroad Company, in said Justice Court of Washington County, State of Florida; that no other defense was interposed by the said plaintiff in error; that the plaintiff in error claimed that it had the right to rely upon said record, judicial proceedings and judgment under and by virtue of Section 1, Article IV. of the Constitution of the United States and the Act of Congress, entitled "An Act to prescribe the mode in which the public acts, records and judicial proceedings in each State shall be authenticated so as to take effect in every other State," approved May 26, 1790, and that it was denied the right claimed thereunder; that said Supreme Court of Alabama in which said judgment was rendered against plaintiff in error, is the highest court in which a decision in said cause could be had in the State of Alabama.

ASSIGNMENT OF ERRORS.

And the Louisville & Nashville Railroad Company, plaintiff in error, by its attorney, says:

That in the record and proceedings aforesaid, there is manifest error in the particulars following, to-wit:

1. The said Supreme Court of the State of Alabama erred in refusing to give full faith and credit to the records and judicial proceedings of the court of the State of Florida, a duly authenticated transcript of said judicial records and proceedings being offered in evidence on the hearing of the cause in the said Supreme Court of Alabama, by the appellant therein, (plaintiff in error,) in said Supreme Court of Alabama, and in rendering judgment against said plaintiff in error, contrary to Section 1, Article IV., of the Constitution of the United States and the Act of Congress entitled "An Act to prescribe the mode in which public acts, records and judicial proceedings in each State shall be authenticated so as to take effect in every other State," approved May 26, 1790. (Sec. 905, U. S. Rev. Stat.)

GEORGE W. JONES,

Attorney for Louisville & Nashville Railroad Company, Plaintiff in Error.

BRIEF.

It will be observed that the Supreme Court of Alabama affirmed the judgment against plaintiff in error upon the ground that the Florida court was without jurisdiction to render the judgment pleaded in bar of the Alabama suit,—following the previous adjudications of that court upon similar cases, which are cited in the opinion. (Rec. p. 27.)

The Supreme Court of Alabama in the cases cited in its opinion in this case has uniformly held that the *situs* of a debt followed the *creditor*, and upon this doctrine it predicates its opinion that the Florida court was unable to reach the *res*, since the creditor was not personally served with process, but was served by publication.

However, this court has taken an exactly opposite position in the case of *Chicago, Rock Island & Pacific Railway Co. v. Sturm*, 174 U. S. 710, and in the cases following the Sturm case.

King v. Cross, 175 U. S. 396;
Rothschild v. Knight, 184 U. S. 334.

In the *Sturm* case, *supra*, this court held as follows:

> "The idea of locality of things which may be said to be intangible is somewhat confusing, but if it be kept up the right of the *creditor* and the obligation of the *debtor* cannot have the same, unless *debtor* and *creditor* live in the same place. But we do not think it is necessary to resort to the idea at all, or to give it important distinction. The essential service of foreign attachment laws is to reach and arrest the payment of what is due and might be paid to a non-resident to the defeat of his creditors. To do it he must go to the domicil of his *debtor*, and can only do it under the laws and procedure in force there. This is a legal necessity, and considerations of *situs* are somewhat artificial. If not artificial, *whatever of substance there is must be with the debtor.* He, and he only, has something in his hands. That something is the *res*, and gives character to the action as one in the nature of a proceeding *in rem*."

> "To ignore this is to give immunity to debts owed to non-resident creditors from attachment by their creditors, and to deny necessary remedies. A debt may be as valuable as tangible things. It is not capable of manual seizure, as they are, but no more than they can it be appropriated by attachment without process and the power to execute the process." * * * "Of course the debt is the property of the *creditor*, and because it is his, the law seeks to subject it, as it does other property, to the payment of *his* creditors. If it can be done in any other way than by process against and jurisdiction of his *debtor*, that way does not occur to us."

The court will observe that the case under consideration is practically parallel with the *Sturm* case from which above quotation is taken.

To hold that the *situs* of a debt is at the domicile of the *creditor* is palpably untenable. It could not be in the hands of the creditor *until the debt is paid.* If the *res* were in the hands of the creditor, the *debt* would, of necessity, be discharged.

See also in this connection:

Holland v. M. & O. R. R. 16 Lea. (Tenn.) 418;
Carson v. M. & C. R. R., 88 Tenn. 646.

The fact that the Supreme Court of Alabama may have considered that the Florida court was without jurisdiction cannot affect the validity of the Florida judgment pleaded.

Laing v. Rigney, 160 U. S. 531.

From the Florida Statutes, (Rec. pp. 4-5-6,) and from the "agreed statement of facts," (Rec. pp. 22-23,) it is clear that the Florida court acquired jurisdiction of the person of defendant (Deer,) and of the Garnishee (plaintiff in error,) strictly in accordance with the machinery provided by the Statutes of Florida.

For the convenience of the court, the Florida Statutes, under which the proceedings in the Florida court were had, are quoted as follows:

"1609. *In counties where no county court.*—In counties where no county court is organized, justices of the peace shall have jurisdiction in the following actions:

"1. In actions arising on contracts for the recovery of money only where the sum demanded does not exceed one hundred dollars. * * *

"8. Of proceedings in attachment, garnishment, replevin, enforcement of liens and distress for rent when the amount or property involved does not exceed in value one hundred dollars."

"1610. *Jurisdiction in counties where there is a county court.*—In counties in which there may be organized a county court, justices of the peace shall have jurisdiction in all the classes of cases set forth in the preceding section, when the amount or property involved shall not exceed in value fifty dollars."

"An Act to amend Section 1658, Revised Statutes, Relating to Notice of Suit and Service and Contents in Cases of Attachments."

Be it enacted by the Legislature of the State of Florida: That section 1658 of the Revised Statutes of the State of Florida be amended so as to read as follows:

"1658. *Service and contents of.*—In all cases commenced by attachment where property shall be attached and not retaken by the defendant, a notice of the institution of the suit by attachment shall be personally served upon the defendant, or shall be published once a week for three months in some newspaper in the county in which the suit is instituted; such notice shall require the defendant and all other persons interested to appear to the action. If the notice be a personal one, the time fixed for appearance shall be as in summons *ad respondendum*; and if it be published the time fixed shall be the rule day succeeding the last publication. Service of the personal notice shall be made at the time fixed for serv-

against said F. E. Deer, and the said Louisville & Nashville Railroad Company prays the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that it may be restored to all things which it has lost by occasion of said judgment, etc.

GEO. W. JONES,
Attorney for Louisville & Nashville Railroad Company, Plaintiff in Error.

Presented this 2d day of Jan'y 1905.

THOS. N. McCLELLAN,
Chief Justice Supreme Ct. of Alabama.

41 Writ of Error.

Supreme Court of Alabama.

Filed Jan. 2, 1905. Rob't F. Ligon, Jr., Clerk.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Plaintiff in Error,
vs.
F. E. DEER, Defendant in Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Alabama, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said supreme court before you, being the highest court of law or equity of said State, in which a decision could be had in said suit between The Louisville & Nashville Railroad Company, as appellant, and F. E. Deer, as appellee, and wherein judgment was in favor of said appellee, in said court on the 22nd day of December, 1904, A. D., against the said appellant, in which said suit the said Louisville & Nashville Railroad Company relied for its defense upon a certain final judgment rendered by a court of competent jurisdiction of the State of Florida in the same identical cause of action which was involved in the suit in said supreme court of Alabama, and the said supreme court of Alabama refused to give full faith and credit to the record and judicial proceedings of said court of Florida, in violation of section 1, article IV, of the Constitution of the United States, and of the act of Congress entitled "An act to prescribe the mode in which public acts, records and judicial proceedings in each State shall be authenticated so as to take effect in every other State, approved May 26th, 1790," (sec. 905, U. S. Rev. Stat.), and whereby it is claimed that said decision of the said supreme court of Alabama is contrary to, and in conflict with section 1, article IV, of the Constitution of the United

States and the act of Congress aforesaid, to the great damage of the Louisville & Nashville Railroad Company, as by its complaint appears, we being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties as aforesaid in this behalf, do command you if judgment herein be given, that then, under your seal distinctly and openly, you send the record and the proceedings aforesaid with all things concern-

42 ing the same, to the Supreme Court of the United States, together with the writ, so that you may have the same in Washington on the 1st day of February, next, in the said Supreme Court to be then and there held, that the record of the proceedings aforesaid being inspected, the Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this the 2nd day of January in the year of our Lord one thousand nine hundred and five.

Witness also my official signature and the seal of the United States circuit court for the middle district of Alabama, this the day and year aforesaid.

[Seal of the United States Circuit Court, Middle District of Alabama.]

J. W. DIMMICK,
Clerk of the United States Circuit Court
for the Middle District of Alabama.

Allowed by
THOS. N. McCLELLAN,
Chief Justice Supreme Court of Alabama.

43 Citation.

Supreme Court of Alabama.

Filed Jan. 2, 1905. Rob't F. Ligon, Jr., Clerk.

UNITED STATES OF AMERICA:

To F. E. Deer, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, in the District of Columbia, within thirty days from the date hereof, pursuant to a writ of error filed in the supreme court of the State of Alabama, wherein The Louisville & Nashville Railroad Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thos. N. McClellan, chief justice of the supreme court of the State of Alabama, this the 2d day of January, 1905.

THOS. N. McCLELLAN,
Chief Justice of the Supreme Court
of the State of Alabama.

We, the undersigned, attorneys for F. E. Deer, defendant in error in the said cause of The Louisville & Nashville Railroad Company, plaintiff in error *versus* F. E. Deer, defendant in error, hereby accept due personal service of the foregoing citation, on behalf of said F. E. Deer, this 2d day of January, 1905.

W. F. HERBERT,
C. P. McINTYRE,
Attorneys for Defendant in Error.

44 Supreme Court of Alabama.

Filed Jan. 2, 1905. Rob't F. Ligon, Jr., Clerk.

In the Supreme Court of Alabama.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellant,
vs.
F. E. DEER, Appellee.

We, the undersigned, attorneys for F. E. Deer, appellee in the above entitled cause, hereby expressly waive the requirements of section one thousand and seven (1007) of the Revised Statutes of the United States, providing for the service of the writ of error by lodging a copy thereof in the clerk's office where the record remains and agree that process on the judgment may be stayed upon appellant giving the security required by law, and that said writ of error may act as a supersedeas.

Witness our hands this the 2d day of January, 1905.

W. F. HERBERT,
C. P. McINTYRE,
Attorneys for F. E. Deer, Appellee.

45 In the Supreme Court of Alabama.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellant,
vs.
F. E. DEER, Appellee.

I, Rob't F. Ligon, clerk of the supreme court of Alabama, by virtue of the within writ of error, and in obedience thereto, do

hereby send herewith the records and proceedings in said cause, duly certified and authenticated according to law, to the honorable the Supreme Court of the United States.

In testimony whereof, I have hereunto affixed my official signature as clerk of the supreme court of Alabama, and have caused the seal of said supreme court to be hereunto affixed, at the capitol, in the city of Montgomery, Alabama, in the year of our Lord, one thousand, nine hundred and five, and of the Independence of the United States the one hundred and twenty-nine.

[Seal of the Supreme Court of Alabama.]

ROBERT F. LIGON,
Clerk of the Supreme Court of Alabama.

Endorsed on cover: File No. 19,603. Alabama supreme court. Term No. 503. The Louisville & Nashville Railroad Company, plaintiff in error, *vs.* F. E. Deer. Filed January 13th, 1905. File No. 19,603.

FILE COPY.

Office Supreme Court U. S.
FILED
MAR 8 1905
JAMES H. McKENNEY,
Clerk

Supreme Court of the United States.

OCTOBER TERM, 1904.

NO. 503. 1164.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
Plaintiff in Error,

vs.

F. E. DEER.

In Error to the Supreme Court of the State of Alabama.

BRIEF OF

GEORGE W. JONES,
Attorney for Plaintiff in Error.

On the trial in said City Court of Montgomery, defendant (Plaintiff in Error) filed its written plea setting up the Florida garnishment judgment as its only defense to said suit. (Rec. pp. 3-4.) This was a sufficient presentation of the Federal question.

Green Bay & Miss. Canal Co. v. Patten Paper Co., 172 U. S. 58-67-68;
Carpenter v. Strange, 141 U. S. 87;
Huntington v. Attrill, 146 U. S. 657-666;
Dewey v. Des Moines, 173 U. S. 193-199.

Note, also, the certificate signed by the Honorable Thomas N. McClellan, Chief Justice of the Supreme Court of Alabama, showing that the Federal question was raised, and that plaintiff in error relied upon the Florida judgment as its sole defense to the Alabama suit.

Armstrong v. Treasurer of Athens County, 16 Peters, 281-285;
Medberry et al. v. State of Ohio, 24 How. 413-414;
Yazoo & Miss. R. R. Co. v. Adams, 180 U. S. 41-48;

UNLESS FULL FAITH AND CREDIT BE GIVEN THE FLORIDA JUDGMENT, PLAINTIFF IN ERROR MUST MAKE DOUBLE PAYMENT.

Unless the "full faith and credit" contemplated by the provisions of the Federal Constitution, and the Federal statutes quoted, be given, the plaintiff in error must suffer by *twice paying the same debt.* It has no alternative.

Under the "agreed statement of facts," upon which the Alabama case was tried, it is admitted that the statutes of Florida were strictly followed in the proceedings in the Florida court, and that said statutes were "duly enacted in accordance with the laws of the State of Florida." It necessarily follows that the judgment rendered there was valid and bind-

ing as against all parties to said suit. It is manifest that the garnishee in the Florida case, (plaintiff in error) was helpless—was at the mercy of the Florida court; that under the machinery provided by the sovereign State of Florida, the creditor of plaintiff in error (Deer,) as well as plaintiff in error, were brought into the jurisdiction of the justice of the peace court of L. L. Charles, Washington County, Florida, and that plaintiff in error, did, in obedience to the laws of that State, discharge its indebtedness to its said creditor—the defendant in error.

If Deer was aggrieved at the Florida judgment, his remedy was by appeal or other appropriate proceedings in the Florida court. The Florida judgment could not be attacked collaterally in another forum.

Laing v. Rigney, 160 U. S. 542.

It is respectfully urged that the judgment in the Alabama case should be vacated.

Respectfully submitted,

Attorney for Plaintiff in Error.

Supreme Court of the United States.

No. 164.—October Term, 1905.

The Louisville and Nashville Railroad Company, Plaintiff in Error, vs. F. E. Deer.	In Error to the Supreme Court of the State of Alabama.

[January 2, 1906.]

Mr. Justice Holmes delivered the opinion of the Court.

This is an action to recover a debt admitted to have been due to the plaintiff, the defendant in error. But it was agreed in the trial court that a suit was brought by one Brock against the plaintiff in Florida, in which the railroad company, the present plaintiff in error, was summoned as garnishee, judgment was recovered against the latter as such for the sum now in suit, and the sum paid by it into Court, all before the present suit was begun. The proceedings in Florida were strictly in accordance with the laws of that State. The railroad company did business there and was permanently liable to service and suit, and the defendant, the present defendant in error, was notified by such publication as the statutes of Florida prescribed. He was not, however, a resident of the State, but lived in Alabama, and the Supreme Court of the latter State affirmed a judgment in his favor on the ground that the Florida Court had no jurisdiction to render the judgment relied on as a defense. Ala. .

Whatever doubts may have been felt when this case was decided below are disposed of by the recent decision in *Harris* v. *Balk*, 198 U. S. 215. There the garnishee was only temporarily present in Maryland, where the first judgment was rendered, and the defendant in that judgment was absent from the State, and served only as the defendant in error was served in Florida. Yet the Maryland judgment was held valid, and a decision by the Supreme Court of North Carolina denying the jurisdiction of the Maryland Court was reversed. In the present case the railroad company was permanently present in the State where it was served. In view of the full and recent discussion in *Harris* v. *Balk* we think it unnecessary to say more.

Judgment reversed.

ice of summons *ad respondendum*, and if made within the State shall be made by the executive officer of the court, but if it be made out of the State it may be made by any person, and proof thereof shall be furnished by the affidavit of such person before any judicial officer having a seal in the State where such service is made. If the writs be issued by a justice of the peace or county judge, the publication shall be only for one month, and when the amount of the debt claimed does not exceed twenty dollars the notice may be posted for one month in three public places in the county instead of being published in a newspaper."

"Approved May 31, 1899." (Rec. pp. 5-6.)

The amount of the debt in the Florida suit was less than Twenty dollars ,($20.00,) (Rec. p. 6,) and notices were posted for one month as provided by the foregoing statute.

"1666. *Right defined.*—Every person who shall have brought a suit in any court of this State against any person, natural or corporate, shall have the right to a writ of garnishment under the circumstances and in the manner hereinafter provided, to subject any indebtedness due to the defendant by a third person, and any goods, moneys, chattels or effects of the defendant in the hands, possession or control of a third person.

"The officers, agents and employes of railroad companies shall be, as regards such companies, third persons, and as such shall be subject to garnishment after judgment against such companies." (Rec. p. 5.)

"1686. *Proceedings when defendant not to be found.* If the officer to whom any summons *ad respondendum* has been directed in a suit in which a writ of garnishment has been issued shall return that the defendant does not reside in the State, or if the officer to whom has been directed, a writ of attachment in a suit commenced by attachment in which a writ of garnishment has also been issued shall not be able to find property of the defendant upon which to levy the writ of attachment, the plaintiff may give notice of the institution of such suit in the manner provided for giving notices of suits commenced by attachment. (See section 1658.)

"And the pleadings and proceedings, and entry of defaults and judgments shall be as in such cases of attachment.

"If the plaintiff in such case shall not give such notice within sixty days after the issuing of the writ of garnishment, the suit shall be dismissed upon motion of the defendant, or of the garnishee." (Rec. p. 5.)

"1019. *Upon a private corporation.*—Process against a corporation, domestic or foreign, may be served:

"1. Upon the president or vice-president or other head of the corporation. In the absence of such head:

"2. Upon the cashier or treasurer, or secretary, or general manager; or, in the absence of all of the above:

"3. Upon any director of such company; or, in the absence of all of the above:

"4. Upon any business agent resident in the county in which the action is brought.

"5. If a foreign corporation shall have none of the foregoing officers or agents in this State, service may be made upon any agent transacting business for it in this State." (Rec. p. 4.)

"1608. *Docket.*—Every justice of the peace shall keep a docket book, in which he shall make fair and accurate entries of all causes brought before him, and a minute of all the proceedings, including the service and return of process, the appearance of such parties as may appear, the fact of trial, whether by the court or jury, the verdict of the jury or finding by the justice, the judgment, including damages and costs separately stated, the issuing of execution and to whom issued, with the date thereof, and the return thereon, and a marginal memorandum of the items of all costs, including justice's fees, sheriff's or constable's fees, and witnesses' fees; which docket, or a certified copy thereof, shall be evidence of the matters therein stated." (Rec. p. 6.)

A certified transcript of the docket of the Florida justice of the peace, duly authenticated, is set out as "*Exhibit A*," to the second plea of Plaintiff in Error, in the Alabama suit. (Rec. pp. 6-17.)

By Section 1608 of the Revised Statutes of Florida, *supra*, a certified transcript of the docket of a justice of the peace is evidence of the matters therein contained.

Section 905, U. S. Rev. Statutes, provides, among other things, the following:

> "And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken."

"Full faith and credit" should, therefore, have been given by the Alabama courts to the judicial proceedings of said Florida court. The garnishment judgment and its payment in Florida constituted a complete defense to the suit in Alabama. The failure to so recognize it was a violation of Section 1, Article IV., of the Constitution of the United States, and the Act of Congress approved May 26, 1790, (U. S. Rev. Stat., § 905.)

Chicago, Rock Island & Pacific Ry. Co., v. Sturm, supra.

See the case of *C. C. C. & St. L .Ry. Co. v. Bartels*, (Ky.) 56 S. W. Rep. 152;

Railway Company v. Thompson, 31 Kansas, 194;

Fithian v. Railroad Co., 31 Pa. St. 114;

Railroad Co. v. Crane, 102 Ill. 249;

Plimpton v. Bigelow, 93 N. Y. 601.

In the case last cited, the court used the following language:

> "There may be no difficulty, upon principle, in compelling a corporation which has an agent and officer in another State, and is transacting business there, to respond, in garnishment proceedings for the debt, although the creditor—the principal defendant—is a non-resident; and, if bound to respond, it is certainly just that the judgment which compels the corporation to pay the debt to the plaintiff should protect it in making such payment, against a subsequent claim by its creditor."

The provisions of the Florida Statutes were strictly complied with in the Florida proceedings. This is admitted under the "agreed statement of facts." (Rec. pp. 22-23.)

These statutes are valid:

Chicago, Rock Island & Pacific Ry. Co. v. Sturm, 174 U. S. 710;
King v. Cross, 175 U. S. 396-399;
Rothschild v. Knight, 184 U. S. 341-344.

The Florida record was valid on its face.

Maxwell v. Stewart, 88 U. S. 71.

It is also admitted under the "agreed statement of facts" that the transcript of the proceedings in the Florida court is properly authenticated. (Rec. pp. 22-23.)

Foreign corporations doing business by agents within a State are treated as residents of the State, and debts due from them to non-residents are garnishable in that State.

Lancashire Ins. Co. v. Corbetts, 165 Ill. 592;
National Fire Ins. Co. of Hartford, Conn. v. Chambers, 32 Atl. 663; 53 N. J. E. 468;
Fithian v. N. Y. etc. R. Co., 31 Pa. St. 114;
Selma, etc. R. Co. v. Tyson, 48 Ga. 351;
German Bank v. Am. Fire Ins. Co., 83 Iowa, 491;
Consens v. Lovejoy, 81 Maine, 467.

See also the case of

Railway Co. v. Thompson, 31 Kan. 194, 1 Pac. 622, in which the following language is used: "The question in this case is not what is the effect of a judgment against a garnishee, but what ought to be such judgment. Of course, no debtor should be required to pay his debt twice; but, at the same time, if he goes into a State outside the State of his residence, and transacts business therein, he must expect, as to all matters of procedure and remedies to abide by the laws of that State."

"He may not claim the privileges and the protection of the laws of the State into which he enters and trans-

acts business, without submitting to the burdens and obligations of such laws. Coming into this State to transact business, he must abide by the exemption laws of this State; and when a party who, for aught that appears, is a citizen of this State, invokes the process of our courts and the rules of our statutes to secure the payment of a just debt, a garnishee may not reply that by the laws of the State where he resides, and where his employe also resides, his debt to such employe is exempt from all garnishee process. * * * *

"As to the liability of a defendant to garnishee proceedings like this, it must be sustained. Whatever doubts may have existed in some States, it seems to us clear that a corporation or individual coming into this State, having property and transacting business here, becomes liable to garnishee proceedings. A mere debt is transitory, and may be enforced wherever the debtor or his property may be found." * * * *

In Section 245 of Rood on Garnishment, is the following:

"In its essential elements, a garnishment suit is a suit brought by the principal defendant against the garnishee in the name and for the benefit of the plaintiff. The plaintiff is empowered by law to step into the shoes of the garnishee's creditor, and acquire his rights; no more, and no less. * * * Wherever the garnishee could be sued by the defendant for the demand, he may be charged as garnishee on account of it. Other States must recognize this right if they recognize garnishment at all."

Beyond any question, defendant in error (Deer) could have sued plaintiff in error in the Florida court by service of process upon its agent, and could, in such suit, have obtained a judgment against plaintiff in error for the amount of its indebtedness to him.

The creditor of defendant in error did no more in the Florida proceedings than defendant in error could himself have done. The plaintiff in the Florida proceedings, therefore, did nothing more than to "step into the shoes" of defendant in error, and assert his rights. "No more, and no less."

The attention of the court is invited to the following language in the court's opinion in the case of *Chicago, Bur-*

lington & Quincy Railway Co. v. Moore, 31 Neb. 629, 48 N. W. 475.

"It appears that, in the suit commenced by Grove against Moore, in the Justice Court in Iowa, notice of garnishment was duly served upon the Railroad Company; that it appeared and answered, disclosing its indebtedness to Moore in the sum of $25.92, and in obedience to the order of the justice, the Company paid the money into court. Moore was duly served *by publication*, and judgment was rendered against him as a non-resident. * * * The judgment in the garnishment suit set up by the plaintiff in error, being valid and binding upon the parties thereto in the State where rendered, is entitled to full faith and credit in this State, and cannot be collaterally attacked. * * * We are simply giving such faith and credit to the judgment of a sister State as comity between States demands."

Citing *Singer Mfg. Co. v. Fleming*, 39 Neb. 679.

See also *Connors v. Hanover Ins. Co.*, 28 Fed. 549; *Gunn v. Howell*, 35 Ala. 144.

FEDERAL QUESTION PROPERLY RAISED.

The Federal question was properly raised, and at the proper time, upon the trial *de novo* in the City Court of Montgomery, on appeal from the Justice of the Peace Court of B. H. Screws.

Section 488 of the Code of Alabama provides as follows:

> "*When and how cases on appeal shall be tried.*—Cases brought by appeal or *certiorari* from judgments of justices of the peace must be tried at the first term thereafter, if the five days' notice of the appeal or *certiorari* required by law, has been given to the appellee, his agent, or attorney, unless good cause be shown for a continuance; but if such notice has not been given, the case must be continued until the next term; and all such cases must be tried *de novo* and according to equity and justice, without regard to any defect in the summons, or other process, or proceedings before the justice."